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NO.

in the
Supreme Court
of the
United States
October Term, 1982

GEORGE GRINDROD,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTION PRESENTED

IS THE ENTRAPMENT DEFENSE AVAILABLE TO A FEDERAL CRIMINAL DEFENDANT WHOSE PARTICIPATION IN AN OFFENSE WAS THE PRODUCT OF GOVERNMENT PERSUASION, FRAUDULENT REPRESENTATIONS, THREATS, COERCIVE TACTICS AND HARASSMENT DIRECTED TO A THIRD PARTY WITH THE INTENT OF INDUCING THE DEFENDANT TO ACT ONCE THOSE THREATS AND PERSUASIVE TACTICS WERE MADE KNOWN TO HIM BY THE THIRD PARTY?

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OPINION BELOW

The Opinion of the Court of Appeals is not yet reported. It appears in the Eleventh Circuit Slip Opinions at 942, *United States v. Lee, Grindrod and Lyell*, January 3, 1983. A copy of the Opinion is included as an Appendix to this Petition. This Petition seeks review only of the portion of the Opinion affirming the conviction of GEORGE GRINDROD.[1]

JURISDICTION

The judgment of the Court of Appeals was entered on January 3, 1983, and this Petition was filed within sixty (60) days of that date pursuant to Supreme Court Rule 20.1. Jurisdiction is conferred by Title 28 U.S.C. §1254(1).

[1]Pursuant to Supreme Court Rule 21.1(b) the other parties in the Court of Appeals were defendants Randall J. Lee and Gregg Parker Lyell.

CONSTITUTIONAL PROVISION INVOLVED

AMENDMENT V

No person shall be . . .
deprived of life,
liberty, or property
without due process
of law.

STATEMENT OF THE CASE

George Grindrod was convicted of conspiracy to import cocaine and sentenced to 18 months imprisonment. His friend, co-defendant and business partner, Randall Lee, drew him into a scheme which, over a ten month period, covered two continents and generated 7/10 of a gram of cocaine. Slip opinion 944.

Lee, seeking to interest undercover agents in a legitimate movie deal in addition to cocaine, met with the agents on January 25, 1978, took $20,000 in cash from them, and was then subjected to threats of death unless he produced a cocaine connection for them. Lee, who had not yet sought Grindrod's involvement, offered him as the Peruvian cocaine connection and promised to secure his cooperation.[2] The tape recording of that

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[2]The tape revealed that Lee used Grindrod as the bait for the $20,000:

> LEE: That was the deal, You wanna meet George, I gotta have the whole twenty.
> (Tape Transcript Defendants' Exhibit 1, p.49.)

meeting contained, among other numerous examples of violence, crudeness and "creative" government conduct, this dialogue with the government agents (whose cover names are in parenthesis):

> Agent Scrocca (Reno): Hey, I gave you twenty thousand dollars. If I don't get fucking results, somebody's going to die!
>
> Agent Williams (Tony Wingo): Reno!
>
> Agent Scrocca (Reno): Somebody's gonna die!
>
> (Tape Transcript, Def.Ex.1A, p.48)

The trial judge was offended by the government conduct, saying:

> . . . certainly it doesn't make one very proud of the law enforcement conduct in this case at that meeting of the twenty-fifth of January. . . .
>
> (R 955).

The Eleventh Circuit wrote:

(Footnote 2 Continued)

At the trial, Lee acknowledged Grindrod was uninvolved and had never told him of any South American cocaine source (R. 725-726), but nevertheless he had assured the agents Grindrod was going to get them "coke", leading Agent Scrocca to exclaim:

> Then you got the whole fucking twenty thousand dollars! (Tape Transcript Defendants' Exhibit 1A, p.15.)

> Such inducement as may have been made upon Grindrod originated with Lee, who was subjected to threatening conversation by the undercover government officials.
>
> Slip opinion at 947.

Grindrod, only after being importuned by Lee, who related the threats to him and sought his cooperation, did play out a role which took him to various meetings with the agents, and unsuccessful and aborted trips to Peru. Those meetings and trips had a Keystone Cops quality. The agents, calling themselves "Tony Wingo" and "Reno", convinced a frightened Grindrod, as they had convinced Lee, that they were members of an "Italian organization or a mafia syndicate" (R 927-928).

In the ensuing months, Grindrod produced no cocaine source but did pay the agents $1,000 after they, feigning outrage, complained about their expenses for two futile trips to Peru in which they never saw a speck of cocaine (R 561-562; 581-582). In Miami, Grindrod did provide the agents with 7/10 of one gram of 100% pure cocaine which a government chemist characterized as typical of pharmaceutical, not illicit, cocaine (R 319-322; 341; 354-355). Other than big talk, the only other thing Grindrod provided the agents was another $6,500, paid to mollify them and end his relationship with the scheme (R 506-507; 931-932).

Several months later he was indicted, leading to the instant conviction and appeal. At trial, Grindrod sought an entrapment instruction, claiming the government's conduct created a substantial risk that the offense would be committed by him, although he was not

predisposed to commit it. The District Court denied the requested instruction and the Eleventh Circuit affirmed:

> As the Fifth Circuit stated in *Henderson v. United States*, 237 F.2d 169,175 (1956), the doctrine of entrapment does not extend to acts of inducement on the part of a private citizen who is not a public official.
>
> Slip opinion at 947.

The Eleventh Circuit found inapposite *United States v. Valencia*, 645 F.2d 1158,1168 (2nd Cir.1980), where the Court said:

> If a person is brought into a criminal scheme after being informed indirectly of conduct or statements by a government agent which could amount to inducement, then that person should be able to avail himself of the defense of entrapment just as may the person who receives the inducement directly.

Since Grindrod was induced by Lee only after, and as a result of, the agent's deceitful and threatening demands for Grindrod's participation, in the Second Circuit Grindrod would have been entitled to an entrapment instruction.

Citing the conflict between the Eleventh and Second Circuits, petitioner sought, and received, a stay of the mandate pending review of his petition by this Court.

REASONS FOR GRANTING CERTIORARI

A. The Decision Below Conflicts With The Decision of the Second Circuit in *United States v. Valencia.*

In *United States v. Valencia*, 645 So.2d 1158 (2nd Cir.1980), the Court stated the issue and its resolution this way:

> It was the judge's thought, and is the Government's position on appeal, that because a defendant cannot be entrapped unless he has had actual contact with a government agent who directly induced him to commit the offense, William [Valencia] was not entitled to have the defense of entrapment through indirect inducement go to the jury. We cannot agree with this view. If a person is brought into a criminal scheme after bring informed indirectly of conduct or statements by a government agent which could amount to inducement, then that person should be able to avail himself of the defense of entrapment just as may the person who receives the inducement directly.
>
> *Id.* 645 F.2d at 1168 (footnote omitted).

The Court's holding was succinct:

> In general, we hold that a vicarious entrapment defense can be presented to a jury only where the defendant first introduced admissable

> evidence that the agents inducement was directly communicated to him by another.
>
> *Id.* 645 F.2d at 1168-1169.

The Eleventh Circuit opinion brought Grindrod squarely within the *Valencia* holding:

> Grindrod was not induced by government officials to join the conspiracy. Perhaps, he was "induced" by Lee to do so.
>
> Slip opinion at 947.

Lee "was subjected to threatening conversation by the undercover government officials". He "induced" Grindrod. *Ibid.* Under *Valencia*, Grindrod would have been entitled to the entrapment instruction. The Eleventh Circuit refused the instruction adopting the position that:

> [T]he doctrine of entrapment does not extend to acts of inducement on the part of a private citizen who is not a government official.
>
> Slip opinion at 947.

Therefore, the Eleventh Circuit opinion in this case is in direct conflict with the Second Circuit in *Valencia*.

B. The Decision Below Presents An Important Question Which Has Not Been, But Should Be, Decided By This Court

Entrapment is the inducement of the commission of a crime by one not predisposed to commit it. The contours of the defense were initially established in *Sorrells v. United States*, 287 U.S. 435 (1932):

> "When the criminal design originates, not with the accused, but is conceived in the mind of government officers, and the accused is by persuasion, deceitful representation or inducement lured into the commission of a criminal act, the government is estopped by sound public policy from prosecution therefor."
>
> *Id.* 287 U.S. at 445, quoting *Newman v. United States*, 299 Fed.128,131 (4th Cir.1924).

Subsequent cases have reaffirmed those principles. *Sherman v. United States*, 356 U.S. 369 (1958); *United States v. Russell*, 411 U.S. 423 (1973). *United States v. Burkley*, 591 F.2d 903,914 (D.C.Cir.1978), surveyed the cases and gave this contemporary restatement of the *Sorrells* doctrine:

> [T]he trial judge must give an [entrapment] instruction if there is any foundation in the evidence, when viewed in a light most favorable to the defendant, for a finding of "inducement" —that is for a finding of persuasion, fraudulent representations, threats, coercive tactics, harassment, promises of reward, pleas based

on need, sympathy or friendship, or any other government conduct that would create a risk of causing an otherwise unpredisposed person to commit the crime charged.

This Court has never addressed the question of whether *Sorrells* and its progeny estops the government from intentionally inducing an unpredisposed person through a third party conduit. This case presents that unanswered question.

The question is important because it involves the integrity and limits of government conduct at a time when, seeking to validly combat crime, artifice and deception have grown into mainstays of law enforcement efforts throughout the nation. How far the government may go in its efforts poses an important issue for society and for the petitioner.

CONCLUSION

Because the decision below conflicts with that of another Court of Appeals, and because the question presented is an important one, yet unanswered by this Court, certiorari should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition For Writ Of Certiorari To The United States Court of Appeals For The Eleventh Circuit has been furnished by U.S. Mail to ROBERT LEVENTHAL, Assistant United States Attorney, at 501 Federal Building, 80 North Hughey Avenue, Orlando, Florida 32801, and two copies to REX LEE, Solicitor General, Department of Justice, Washington, D.C., on this __ day of February, 1983.

BRUCE ROGOW

UNITED STATES of America,
Plaintiff-Appellee,

v.

Randall J. LEE, George Grindrod and
Gregg Parker Lyell,
Defendants-Appellants.

No. 80-5224.

United States Court of Appeals,
Eleventh Circuit.

Jan. 3, 1983.

Defendants were convicted in the United States District Court for the Middle District of Florida, John A. Reed, Jr., J., for conspiracy to import cocaine into the United States, and they appealed. The Court of Appeals, Clark, Circuit Judge, held that: (1) evidence, which established that one defendant traveled to Peru to facilitate drug deal and showed undercover agents how they might smuggle drugs into the country in llama skins, that another defendant was in close contact with codefendant and had knowledge of his actions and that a third codefendant acted as intermediary between the defendant who was in Peru and the agents, was sufficient to convict defendants of conspiracy to import cocaine into the United States, and (2) defendants were not entitled to entrapment instruction.

Affirmed.

1. Conspiracy —28(3)

Essential element of a drug conspiracy is an agreement by two or more persons to violate narcotics laws.

2. Conspiracy —47(12)

Existence of an agreement by two or more persons to violate the narcotics laws may be proved by circumstantial evidence, such as inferences from the conduct of alleged participants or from circumstantial evidence of a scheme.

3. Conspiracy —40.1

A person need not have knowledge of all details of a conspiracy; proof is required only that he knew of the essential objective of the conspiracy.

4. Conspiracy —40.1

A defendant may be found guilty of conspiracy even if he plays only a minor role in the total scheme.

5. Conspiracy —47(12)

Evidence, which established that one defendant traveled to Peru to facilitate drug deal and showed undercover agents how they might smuggle drugs into the country in llama skins, that another defendant was in close contact with codefendant and had knowledge of his actions and that a third codefendant acted as intermediary between the defendant who was in Peru

and the agents, was sufficient to convict defendants of conspiracy to import cocaine into the United States.

6. Criminal Law —867

Defendant, who was charged with conspiracy to import cocaine into the United States, suffered no significant prejudice as result of admission of a statement in a taped conversation that implied he had been in prison before, particularly in light of the clear evidence of his guilt and the isolated nature of the comment and, therefore, trial court did not err in denying defendant's motion for mistrial.

[943]

7. Criminal Law —772(6)

Defendants, who were not "induced" by government officials to join in drug conspiracy, were not entitled to an entrapment instruction.

8. Criminal Law —772(6)

In order to be entitled to an entrapment instruction, the defendant must produce evidence that shows government inducement; furthermore, nature of the required showing is that some evidence must be shown, but more than a scintilla must be presented.

9. Criminal Law —37(3, 4)

For entrapment to exist, criminal design must originate with government officials, and it is they who

must plant criminal design in the mind of an innocent man.

10. Criminal Law —38

Defendant's failure to take advantage of numerous reasonable opportunities to inform the police of the drug deal with undercover agents whom he believed to be members of "Mafia" precluded assertion of duress defense in prosecution for conspiracy to import cocaine into the United States.

11. Criminal Law —38

Threat of imminent physical harm is a requirement of the duress defense.

Appeals from the United States District Court for the Middle District of Florida.

Before TJOFLAT and CLARK, Circuit Judges, and MILLER*, Judge.

CLARK, Circuit Judge:

Gregg Parker Lyell, George Grindrod, and Randall J. Lee appeal their convictions under 21 U.S.C. §§ 960 and 963 for conspiracy to import cocaine into the United States. We affirm their convictions.

---

*Honorable Jack R. Miller, Judge for the U.S. Court of Customs and Patent Appeals, sitting by designation.

The bizarre story opens in late 1977 when defendant Lee commented to Luis Edwards Vergara that he was looking for a cocaine buyer. Vergara mentioned this conversation to a friend of his, Jim Brewer, who passed along the name and number of "Tony Wingo" (undercover agent Herb Williams) to defendant Lyell, who was acting in concert with Lee. Lyell called "Tony Wingo" and arranged a meeting to discuss "South American products."

At this meeting, Lyell identified the "South American products" as "pink champagne," a slang term for cocaine. Lyell indicated that it would cost $20,000 for an introduction to a Peruvian cocaine producer and that the cocaine would be available for $13,000 per pound. Over the next few days, Lyell had several meetings with "Wingo" as well as with "Reno" (undercover agent Peter Scrocca) and "Georgie" (undercover agent John Ellis). During these meetings, Lyell indicated that one hundred kilos of cocaine were available for sale. Further, he indicated that his sources in Peru agreed to deliver the cocaine to Orlando or Miami at $23,000 per kilogram.

On January 17, at a meeting in Kissimmee, Lee joined the negotiations. Lee announced that for $20,000 he would introduce them to a source in Lima and that they would get "top quality merchandise." Lee then informed Grindrod of the day's events.

[944] In meetings afterward, Lee tried to convince the agents that his proposed movie, "The Marksman," would provide an excellent front for their smuggling operations and repeatedly attempted to sell them shares in it. The agents, posing as Mafia chieftains, rejected all such solicitations and pressed negotiations for the cocaine sale.

A long series of meetings then commenced. Lee attempted to get the agents to invest in his movie, but continued to promise to secure them a cocaine source in return for $20,000. It was arranged that Grindrod, a pilot for Braniff Airlines, would fly down to Peru and make the arrangements for the agents to meet the Peruvian source, Juan Lujan. Lee was paid the $20,000.

Grindrod met several of the agents at the Hotel Carillion in Lima on February 7, 1978. The agents met with Lujan, and Grindrod showed them how cocaine could be smuggled into the United States inside the leather backing of llama rugs. The actual attempt to buy cocaine failed when Lujan announced that his deliveryman with a sample was not going to arrive. The agents then returned to Miami.

Further meetings were held between the agents and both Lee and Grindrod. During one of these meetings, Lee introduced MacLester Snow, who offered "Wingo" help in solving the problems that had developed. Later, Lee offered to sell his business, "The House of Llama," so it could be used by Wingo as a front to smuggle cocaine.

On March 1, 1978, Grindrod turned over to agents 7/10 of a gram of cocaine which tested out at 100% pure. Grindrod informed the agents that this was a sample of the cocaine that they would purchase. Lee attempted to facilitate negotiations between Lujan and the agents, specifically in the area of how Lujan would be paid for his cocaine. Lee did make clear that he would not physically get involved in the discussions between Lujan and the agents. Lee also set the price for the delivery of the cocaine at $12,000 per kilo,

which did not include the $13,000 per kilo to be paid to Lujan.

In late April, arrangements were made for a cocaine sale to be transacted in Lima. This deal fell through, but new arrangements were made and the agents met Grindrod on May 7, 1978 at the Hotel Cesar in Mira Flores, Peru. This trip, however, also proved fruitless as Lujan called off the deal when he became aware of the Peruvian investigative police watching the Americans.

After this point, the deal began to fall apart. On July 17, 1978, the agents told Grindrod they wanted their $20,000 back. On July 26, 1978, Grindrod returned $6,500; Lee explained that he had no money left to return. Lee stated that of the original $20,000, he kept $6,500; Grindrod got $6,500; $5,000 went into "The House of Llama"; and $2,000 went to Lyell. Thus, $13,500 was not recoverable.

On October 12, 1978, Grindrod and Lee made one more attempt to connect the agents and Lujan. This too fell through and the agents broke off contact. On July 25, 1979, Grindrod, Lee, and Lyell (as well as several other individuals) were indicted by the Orlando grand jury and charged with conspiracy to import cocaine into the United States.

The appellants allege that the evidence is insufficient to convict them of conspiracy to import cocaine into the United States. At [945] most, the appellants contend, there was an agreement to provide the name of the Peruvian drug connection. Lyell argues that this argument is especially applicable to him as he claims he withdrew from the conspiracy in January, long before the sample

of cocaine was delivered. The appellants present a case out of New York, *United States v. Hysohion*, 448 F.2d 343 (2d Cir. 1971), as authority. *Hysohion* stands for the proposition that a man can bring together a willing buyer and a willing seller without necessarily creating a conspiracy.

The Eleventh Circuit, in reviewing the sufficiency of the evidence to support a criminal conviction, inquires whether "a reasonable trier of fact could find that the evidence establishes guilt beyond a reasonable doubt." *United States v. Bell*, 678 F.2d 547, 549 (5th Cir. 1982) (en banc).[1]

[1-4] The essential element of a drug conspiracy is an agreement by two or more persons to violate the narcotics laws. *United States v. Tamargo*, 672 F.2d 887, 889 (11th Cir. 1982); *United States v. Spradlen*, 662 F.2d 724, 727 (11th Cir. 1981). The existence of such an agreement may be proved by circumstantial evidence, such as "inferences from the conduct of the alleged participants or from circumstantial evidence of a scheme." *Id.* A person need not have knowledge of all the details of a conspiracy; proof is required only that he knew of the essential objective of the conspiracy. *United States v. Tamargo, supra*, 672 F.2d at 889; *United States v. Hernandez*, 668 F.2d 824 (5th Cir. 1982). Moreover, the "defendant may be found guilty of conspiracy . . . even if he plays only a minor role in the total scheme." *Id; see also United States v. Hirst*, 668 F.2d 1180, 1185 (11th Cir. 1982).

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[1]We are bound by all en banc decisions of the Unit B division of the former Fifth Circuit. *Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982) (corrected opinion).

[5] The evidence in this case, viewed in the light most favorable to the government, supports the convictions of the appellants. Grindrod traveled to Peru to facilitate the drug deal, he showed the agents how they might smuggle drugs into the country in llama skins, he produced a sample of cocaine in Miami, he paid the agents $1,000 to defray their expenses on their unsuccessful trip to Lima and remarked that Lujan would pay him back, as well as numerous other acts which indicate his guilt. Lee was in close contact with Grindrod throughout this whole period and had knowledge of his actions, he was concerned about facilitating the remittance of payment from the agents to Lujan, and he negotiated the price of the delivery of the cocaine, to name but a few of his activities that indicated Lee conspired to import the drugs into the country. Lyell, among other acts, informed the agents of the price of the cocaine, he guaranteed its quality, he announced the 100 kilos were available for sale, he acted as an intermediary between Grindrod who was in Peru making arrangements with Lujan and the agents, and he was a party to conversations where schemes to import the cocaine were discussed. Given this extensive involvement on the part of the appellants, it is clear that they did considerably more than just facilitate the meeting of willing buyers and sellers. Therefore, we find *Hysohion* inapposite. We hold that the evidence was sufficient to convict the appellants of conspiracy to import cocaine into the United States.[2]

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[2]All the appellants urged us to give careful consideration to the tape of the January 25 meeting between Lee, Lyell and the agents. We have given the tape careful study and have concluded that it in no way exonerates any of the appellants. While certain comments made by Lee tend to show that he did not intend to

[946] Lyell raises an argument that the trial court erred in finding by a preponderance of the evidence that he was a member of the conspiracy charged, and thus admitting heresay statements against him. This argument has no merit. We have already held that the government presented evidence sufficient to prove beyond a reasonable doubt that a conspiracy existed and that Lyell was a part of it. Necessarily, therefore, the government must have proved by a preponderance of evidence that Lyell was part of a conspiracy to import cocaine.

[6] Lyell also maintains that the trial court erred in denying his motion for mistrial based upon the admission of a statement in a taped conversation that implied he had been in prison before. Specifically, the complained of statement was Lee's comment to one of the agents that Lyell "gets involved in stuff that's gonna, you know, wind him back in the slammer, and, ahh, if, you get too involved with some of his crazy things, ah, you know, he'll drag a lot of other people down." Lyell argues that since he put on no evidence under Federal Rule of Evidence 404(a), evidence of bad character could not be used to impeach him.

(Footnote 2 Continued)

import cocaine, these statements cannot be viewed in isolation. Other statements were made by Lee during the meeting which indicated his willingness to facilitate the importation of cocaine into the United States. Further, as noted above, the January 25 meeting was only one of a series of meetings. The examination of all the tapes makes the conclusion inescapable that Lee, Lyell, and Grindrod voluntarily attempted to import cocaine into the United States.

We decline to accept Lyell's view of this issue. A number of factors indicate that he should not prevail. His counsel reviewed the tape in question prior to its being played for the jury. He made no objection prior to its admission. Second, his attorney declined the trial judge's offer to give a curative instruction. Third, the prosecution presented a large number of tapes, representing literally months of telephone conversations and meetings. Thus, it is clear that this particular tape was not presented in order to attack Lyell's reputation, but was simply one of a series showing the development of the conspiracy. Lastly, the sheer volume of evidence, both against Lyell and the other appellants, was so great as to make the isolated comment insignificant. Under *United States v. Franklin*, 586 F.2d 560 (5th Cir. 1978), and *United States v. Roland*, 449 F.2d 1281 (5th Cir. 1971), it has been established that the admission of such a statement does not require automatic reversal. Rather, as in *Roland*, we conclude that Lyell suffered no significant prejudice thereby. Given the clear evidence of his guilt and the isolated nature of the comment, we hold that Lyell's motion for mistrial was properly denied.

[7] Both Lee and Grindrod argue that the trial court erred in not giving an entrapment instruction. We hold that the district court properly denied the instruction in both cases.

[8] It is settled in this circuit that the defendant must produce evidence that shows government inducement. Further, the nature of the required showing is that some evidence must be shown, but more than a scintilla must be presented. *United States v. Reyes*, 645 F.2d 285 (5th Cir. 1981). [947] If this level of evidence is met, then the entrapment instruction should be given.

[9] For entrapment to exist, the criminal design must originate with government officials, and it is they who must plant the criminal design in the mind of an innocent man. *Sorrells v. United States*, 287 U.S. 435, 53 S.Ct. 210, 77 L.Ed. 413 (1932); *United States v. Webster*, 649 F.2d 346 (5th Cir. 1981). We turn now to the question of whether the appellants met the *Reyes* standard.

The criminal design clearly originated with Lee. It was Lee who sent out agents looking for cocaine buyers. There is no evidence that the importation scheme originated with the government, and numerous acts point to Lee's predisposition to commit the crime. Thus, Lee's arguments are completely inapposite and meritless, and he was not entitled to an entrapment instruction.

Grindrod argues that the government "entrapped" him. Specifically, Grindrod argues that he played along with the scheme to "save Lee's skin." He maintains that he had no desire to smuggle cocaine into the country. Rather, according to his brief:

> His theory of defense was that his participation in the activities upon which the charge was based was occasioned by the government agents' threats and coercive tactics directed to his friend, Randy Lee, who became involved with the agents and then, frightened by them, sought Grindrod's help in acting out a scheme which had no ability to produce cocaine.
>
> * * * * *
>
> Most of the important facts in this case are not disputed. There is no doubt that Randall

> Lee, Gregg Lyell, and George Grindrod spoke to and met with DEA agents regarding cocaine. The disputes center around the defendants' motivation and the court's failure to submit to the jury the theory of defense advanced by Mr. Grindrod, whose role commenced only after Randy Lee took $20,000 from government agents who told him "Somebody's gonna die" unless the agents got "results."

Grindrod's brief p. 3.

Grindrod was not induced by government officials to join the conspiracy. Perhaps, he was "induced" by Lee to do so. As the Fifth Circuit stated in *Henderson v. United States*, 237 F.2d 169, 175 (1956), the doctrine of entrapment does not extend to acts of inducement on the part of a private citizen who is not a government official. Moreover, Lee was neither an agent of the government officials, *Pearson v. United States*, 378 F.2d 555, 560 (5th Cir. 1967), nor an unsuspecting third party passing on an inducement upon Grindrod by government officials, *Johnson v. United States*, 317 F.2d 127, 133 (D.C. Cir. 1963). Such inducement as may have been made upon Grindrod originated with Lee, who was subjected to threatening conversation by the undercover government officials. However, Lee was not induced and had no entrapment defense. Grindrod cites *United States v. Valencia*, 645 F.2d 1158, 1168 (2d Cir. 1980), where the court said:

> If a person is brought into a criminal scheme after being informed indirectly of conduct or statements by a government agent which could

> amount to inducement, then that person should be able to avail himself of the defense of entrapment just as may the person who received the inducement directly.

However, any indirect "inducement" in that case by undercover government officials [948] through defendant William Valencia's wife was upon the defendant William Valencia and originated with the government officials, so that case is not apposite. Therefore, we hold that the court below properly denied the requested entrapment defense instruction.

[10, 11] We note that the root of Grindrod's defense is grounded in duress, not entrapment. However, Grindrod had numerous reasonable opportunities to inform the police of the deal with the "Mafia" and thereby "save" Lee. He failed to take advantage of such opportunities. This precludes any duress defense. *See, e.g., Rhode Island Recreation Center v. Aetna Casualty and Insurance Co.*, 177 F.2d 603 (1st Cir. 1949); *State v. St. Clair*, 262 S.W.2d 25 (Mo. 1953); W. LaFave & A. Scott, Criminal Law 378, 379 (1972). Further, there was no indication that Lee was threatened with *imminent* physical harm, also a requirement of the duress defense. Thus, when faced with a duress defense which had to fail, the appellant Grindrod was forced to attempt an entrapment defense, which was equally doomed to failure.

We have examined all of the appellants' contentions and have found them to be without merit. Consequently, affirmation of their convictions is required.

AFFIRMED.